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May 18, 2009

**FILING VIA E-MAIL**

Surface Transportation Board  
The Honorable Anne K. Quinlan  
Acting Secretary  
395 E Street SW  
Washington, DC 20423

275732

Re: **STB Finance Docket No. 35219 Union Pacific Railroad – Petition for Declaratory Order – Comment submitted by Hasa, Inc.**

Dear Acting Secretary:

Hasa, Inc. hereby submits the following comment with respect to Union Pacific Railroad's Petition for Declaratory Order. Hasa opposes the Petition of UP. We request that the Board accept this letter and make it part of the administrative record as it was only recently that Hasa, Inc. learned of the Petition, and in particular, the arguments made by UP in its Rebuttal and Reply to Comments submitted April 30, 2009.

Hasa is a fabricator of liquid sodium hypochlorite primarily used as a sanitizer for swimming pool and spa water. Hasa's manufacturing of sodium hypochlorite involves the off-loading of gaseous chlorine from a railcar directly into a controlled reaction chamber.

A significant portion of the chlorine used by Hasa in the manufacturing process at its Arizona and Northern and Southern California plants is supplied by the U.S. Magnesium facility in Rowley, Utah.

UP's Rebuttal and Reply to Comments, dated April 30, 2009, states that: "UP is not seeking a broad rule that a rail carrier is not required to transport chlorine when alternative sources are closer to the destination." (UP's Rebuttal and Reply Comments p. 4).

In essence, UP appears to be arguing the obverse: If there is an alternative source available for the transport of chlorine which is closer to the destination, the common carrier should not be required to establish rates for that destination.

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Page 2

First, the granting of UP's Petition would elevate distance over twenty-six (26) other factors that are relevant to route assessment.

Secondly, an affirmative decision by the Board would be anti-competitive as it would establish a precedent whereby a manufacturer using chlorine would be required to purchase the product from the nearest supplier, regardless of price and other relevant factors.

For example, Hasa purchases a large quantity of chlorine from U.S. Magnesium rather than from a closer producer located at Henderson, Nevada. One reason for this is that the Henderson, Nevada producer owns and operates a sodium hypochlorite production facility in Southern California which competes directly with Hasa.

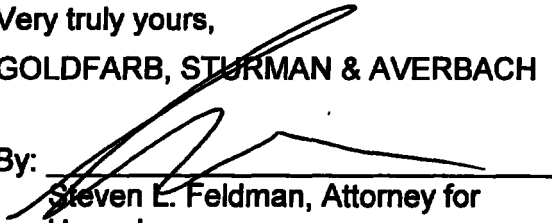
Hasa can only receive chlorine at its plants by rail. Hasa should not be required to purchase one of its essential raw materials from a competitor.

Thirdly, it is fundamental to our economic system that a manufacturer be entitled to purchase product from a producer on the best price, terms and conditions available. The precedential effect of requiring a manufacturer to purchase chlorine from the closest producer is clearly anti-competitive, would tend to establish geographic zones of influence, and would likely result in price-fixing which would be harmful to the ultimate consumer of sodium hypochlorite products.

Finally, both the U. S. Department of Transportation and Transportation Security Administration have adopted a comprehensive regulatory safety scheme for the transportation of chlorine. As explained in their comments, there is no need to narrow the common carrier obligation as requested by UP and the UP Petition raises significant jurisdictional concerns.

For the above reasons alone, Hasa requests that the Surface Transportation Board rule against UP's Petition. We request that these comments be added to the administrative record. No party will be prejudiced by their inclusion. Thank you very much for your consideration of this comment.

Very truly yours,  
GOLDFARB, STURMAN & AVERBACH

By:   
Steven E. Feldman, Attorney for  
Hasa, Inc.

# **CERTIFICATE OF SERVICE**

I, hereby certify that I have served on this 18<sup>th</sup> day of May, 2009 a copy of the foregoing  
"Comments of Hasa, Inc." by first-class mail on all parties of record in this proceeding.



Steven L. Feldman .